



The Growth of Constitutional Power in the United States. by Carl Brent Swisher

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sumption of functions once exercised by the states. The Vargas régime indicates this trend; its clearest expression was the creation of the totalitarian *Estado Novo* in 1937. Still further centralization will probably come with continued industrial and urban development.

What of Brazil's future? Dr. Smith is optimistic, with reservations. He believes Brazil will develop to the extent that she improves health standards, adopts modern technology, finds an equitable system of wealth distribution, and overcomes her general cultural lag. From the evidence presented it is clear Brazil is making notable progress.

The technical apparatus of Dr. Smith's book is excellent. More than one hundred photographs, twenty-nine figures and maps, seventy-eight statistical tables, an excellent glossary (lacking only pronunciation), and two indexes, one of authors and the other of subject matter, enhance its other merits. The footnotes are a splendid guide to the best printed information on Brazil. No reader who wishes to know Brazil can ignore this book.

BAILEY W. DIFFIE

THE CITY COLLEGE
NEW YORK CITY

The Growth of Constitutional Power in the United States. By CARL BRENT SWISHER. Chicago, University of Chicago Press, 1946.—x, 261 pp. \$2.50.

This volume by a leading student of constitutional development is an elaboration of his lectures given early in 1945 on the Walgreen Foundation at the University of Chicago. If much of the material seems familiar, Professor Swisher has provided a convenient review of the great landmarks in constitutional interpretation. And parts are so suggestive that they deserve careful attention.

Professor Swisher has chosen to discuss his subject in the framework of democratic conceptions about government. He has pointed to a continuing conflict between the positive and negative provisions of the Constitution. We often forget that the first purpose of government is to perform various social activities. In the author's view the negative characteristics of the Constitution have received too much emphasis. Largely then, in terms of constitutional interpretation by the Supreme Court, the author has discussed federalism, checks and balances, the expanding authority of the federal government, and civil and property rights. The more recent interests of the constitutional lawyer are illus-

trated in the two chapters devoted respectively to "Administrative Justice" and "World Affairs".

Of these chapters which make up the bulk of the book, the most valuable perhaps is that discussing "The Pendulum of Checks and Balances". Here Professor Swisher presents a brief historical survey of changing relationships between all three branches of government—the Executive, the Legislature, and the Supreme Court. He criticizes Marshall for his "permanent influence in insulating the judiciary against coöperative interchange with Congress and the President" (p. 57). In his discussion of the shifting boundaries of federal authority, the author clearly points out that much of the controversy is motivated not so much by a fine concern for state rights as by a desire on the part of certain economic interests to escape any form of government control.

Professor Swisher is no blind admirer of the New Deal. Indeed, he is frequently critical of President Roosevelt, and, for this reviewer at least, exaggerates the "administrative chaos" in both pre-war and wartime Washington. At the same time the author is firmly convinced that in striking down eleven important acts of Congress in the two years 1935 and 1936, the Supreme Court was too far out of line with popular sentiment, and that many of its members expressed in their opinions outdated conceptions of social values.

It is in the last two chapters that Professor Swisher fully reveals his constitutional scholarship. His discussion of the Supreme Court in the years since the court-packing episode of 1937 is probably the fairest and at the same time the most penetrating discussion of the subject which has yet appeared. He concludes that current criticism of the highest tribunal for "diversity of opinion" is unjustified. Indeed, he feels that in certain fields of constitutional law there is greater stability now than twenty years ago. He points specifically to utility rate regulation and to simplification of the concept of due process of law. Even the fact that we can now assume the constitutionality of most measures which Congress sees fit to enact "implies a kind of stability or, at any rate, a kind of certainty in law which has long been absent" (p. 232).

In his discussion of the constitutional system of today, Professor Swisher puts forward an intriguing suggestion about "a new type of federalism". He points out that if government be viewed in terms of "aggregations of power", then our federal system has two new elements—our great corporate enterprises and our labor unions. He contrasts the conflicting philosophy of organization between government

and corporations and asks the challenging question whether a political democracy and corporation dictatorship are compatible. In any event, he seems on safe ground in concluding that the American constitutional system "during the decades ahead must increasingly involve supervision of the sweep of enterprise upon which the well-being of the American people depends" (p. 241). Of the three branches of government, he feels that the Legislature presents the greatest problems as well as the greatest need for change. But on the whole he is optimistic about the future. "With the people properly on guard and properly active, the growth of constitutional power in the United States should be a matter of pride and not at all of anxious concern" (p. 252).

JOHN D. MILLETT

Woman as Force in History: A Study in Traditions and Realities. By MARY R. BEARD. New York, The Macmillan Co., 1946.—viii, 369 pp. \$3.50.

This work is full of interest to the social historian and the feminist, though the latter may find some parts of it strange doctrine. Mrs. Beard affirms that woman's part in history has been grievously underestimated. This she attributes to the tradition that women have been members of a subject sex throughout history, a subjection from which they have been emerging in the past century. She demonstrates very capably that the tradition is of comparatively recent origin and shows that it is probably the result of Blackstone's statement of the position of women under the common law. By careful examination she reveals that this theory, though technically correct, was actually offset in practice by equity jurisprudence. There is some evidence that Blackstone's position may have been influenced by animus on his part. Through a variety of circumstances which are discussed at length this concept of woman's subjection to man was transmitted to the United States. It became the special target of the feminists of 1848 and their successors, although the use of contracts and other practices under equity had alleviated the situation before the struggle began. Mrs. Beard makes a study of women's property and other rights in English law before 1765 and concludes that women were far from being in utter subjection. Elsewhere she gives much attention to the political rôle of women throughout history and suggests that manhood suffrage may have brought a temporary decline in woman's political activity but that women gained the ballot with greater speed and on the whole less painfully than men. The leaders of the woman's movement tended